IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

CHAMBER SUMMONS NO.1656 OF 2004

IN

SUIT NO.33 OF 1986

Krishna Arjun Bhoir ...Plaintiff.

vs.

1. Gaurabai Ramchandra Patil & others. ...Defendants.

And

1. Laxman R. Patil & others. ...Respondents.

Mr.V.P.Divekar i/b. M/s.Divekar & Co., for Plaintiff.

Ms.Archana Karekar i/b. S.R.Mishra, for Defendant nos.2 to 4 and Respondent nos.1 to 12.

CORAM: D.K.DESHMUKH,J.

DATED: 17th January, 2007.

P.C.:-

1. Because of a mistake committed in noting down the order passed by the Court on the docket this controversy has arisen. There is

no dispute that chamber summons no.1656 of 2004 was taken out by the original plaintiff and the original plaintiff withdrew it. The controversy is whether the Court had granted liberty to the plaintiff to take out a fresh chamber summons. According to the plaintiff the liberty was granted by the Court. According to the defendants, however, the liberty was not granted. But the affidavit dated 28.8.2006 filed on behalf of the defendants by Mr.Vivek Gyanshyam Patil shows that, even according to the defendants, when the plaintiff withdrew the chamber summons, the Court had granted him liberty to take out a fresh chamber summons. Thus, the statement made by the Advocate appearing for the plaintiff that the liberty was granted by the Court to the plaintiff to take out a fresh chamber summons is supported by the affidavit filed by the defendants themselves viz. affidavit of Mr.Vivek G. Patil dated 28.8.2006. In this view of the matter therefore, it is clarified that the plaintiff was permitted to withdraw the chamber summons no.1656 of 2004 with liberty to take out a fresh chamber summons.